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May 21, 2015

Via Electronic Transmittal & U.S. Mail

Jan A. Greben
GREBEN & ASSOCIATES
125 East De La Guerra Street, Ste. 203
Santa Barbara, California 93101

Re: *Coppola v. Smith et al.* E.D. of CA, Fresno Division
USDC Case No: 1:11-CV-01257-AWI-BAM
Notice of Intent to Bring Action Under Resource Conservation and
Recovery Act, 42 U.S.C. § 6972, to Effect the Cleanup of Hazardous Waste at
and Near 717 West Main Street, Visalia California
Our File No.: 701-04-022

Dear Mr. Jan:

While this letter would ordinarily be sent to your clients, I am sending it to you at your direction; as you will recall, a RCRA pre-litigation letter was sent to the City, but directed that "[a]ll communications regarding this matter should be addressed to" you at your office. In order to both cooperate with your letter and to minimize the disruption this letter will cause your clients, my client is complying. If the letter should be sent to your clients directly, please let me know the appropriate addresses and, in the case of the trusts, the appropriate persons.

Prior to bringing a claim under the Federal Resource Conservation and Recovery Act ("RCRA"), for the contribution to an imminent and substantial endangerment to human health and the environment by the Viola M. Coppola Irrevocable Trust, Gary Coppola, and the Trust of Anthony M. Coppola [collectively, the "Coppolas"], a citizen wishing to bring suit under that statutory scheme is required to provide minimum notice to the alleged contributors, the Administrator of the solid waste management agency for the State in which the violation is alleged to have occurred, the Administrator of the Environmental Protection Agency ("EPA"), and the Regional Administrator of the EPA for the region in which the violation is alleged to have occurred. (42 U.S.C. § 6972 and 40 CFR § 254.2). The claimant must provide ninety (90) days notice prior to bringing the RCRA action.

On behalf of the City of Visalia ["City"], our client, we are providing the requisite statutory notification of the Coppolas' continuing RCRA violations and the Coppolas' contribution to an imminent and substantial endangerment resulting from the Coppolas' ownership and operation of a dry cleaning facility.

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City is providing this statutory notice to the Coppolas, the Administrator of the solid waste management agency for the state of California, the Administrator of the EPA, and the applicable Regional Administrator of the EPA.

City seeks a clean-up order, declaratory relief, related damages and costs of suit (including attorneys and expert witness fees), as a result of the Coppolas' purposeful contribution of hazardous substances by pouring those substances in violation of the RCRA either into City's sewer lines at the 717 West Main Street in the city of Visalia or by otherwise pouring them onto the ground at or near that property in Tulare County, California (the "Coppola Property"). In addition, this action will seek an order for the Coppolas to undertake all of the investigation, studies, monitoring, and response actions necessary to respond to, abate, and remediate, fully and promptly, the hazardous waste contamination emanating from the Coppola Property and leaching from the Coppolas' own depositary points in and throughout the rest of the City.

I. The Contamination at Issue

The Coppolas own the Coppola Property, upon which they have operated a dry cleaning business at relevant times. On September 8, 2006, California's Department of Toxic Substances Control ("DTSC") issued an Imminent and Substantial Endangerment Order ("DTSC IS&E Order") for the groundwater contamination in Visalia. On October 28, 2009, the DTSC requested that Coppola enter into a Consent Order to allow the DTSC to enter onto and investigate the occurrence of tetrachloroethylene ("PCE"), a hazardous substance, in the soil, soil gas, and/or groundwater at and near the Coppola Property. To the best of City's knowledge, Coppola subsequently signed the DTSC Consent Order in July 2011, formally consenting to conduct the DTSC required investigation. The DTSC Consent Order also sets forth the DTSC's regulatory and statutory authority to oversee the investigation and cleanup of the contamination at issue, as well as mandate deadlines, procedures, and issue fines for violations thereof. The City has never been asked to sign a DTSC Consent Order for this particular event/site, nor is it under requirement or mandate from any other regulatory agency to investigate and/or cleanup the contamination at issue because others, including the Coppolas, caused the problem by depositing PCE into the environment.

As City understands the current situation, the Coppolas are conducting environmental investigation into the PCEs they and potentially others deposited into the environment at and near the Coppola Property. The Coppolas later asserted claims against several entities, individuals, municipalities [including City], and utility companies arising out of the Federal Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), California's Superfund, and/or California common law.

The Coppolas' continued investigation has been met with multiple administrative and uncontrollable delays because they insist on applying for permits at the last minute, and then demand that the City's Attorneys react quickly to the self-caused emergencies. The Coppolas now claim that this work has uncovered environmental contamination, even

though it would appear they have known about it since 2006, and would have known about their own failures to report their deposit of hazardous substances into the environment as they did so since the RCRA became law.

II. RCRA

RCRA is a federal statutory scheme that "establishes a program for the management of hazardous waste from its origin to its ultimate disposal (so-called "cradle to grave" regulation) to ensure that the means of disposal of hazardous waste will prevent escape of those wastes into the environment, and provides an enforcement mechanism to ensure compliance with that program." (*Westfarm Assocs. Ltd. Partnership v. International Fabricare Inst.*, 846 F. Supp. 422, 434 (1993)).

Key differences between RCRA and CERCLA include, but are not limited to, the specific remedies RCRA affords. Specifically, RCRA gives rise to injunctive relief as well as an award of attorneys' fees, whereas CERCLA provides a private party a mechanism to recover past costs, contribution, and indemnity.

To establish a claim for injunctive relief under RCRA, "a plaintiff is required under § 6972(a)(1)(B) to demonstrate: (1) that the defendant is a person, including, but not limited to, one who was or is a generator or transporter of solid or hazardous waste or one who was or is an owner or operator of a solid or hazardous waste treatment, storage, or disposal facility; (2) that the defendant has contributed to or is contributing to the handling, storage, treatment, transportation, or disposal of solid or hazardous waste; and (3) that the solid or hazardous waste may present an imminent and substantial endangerment to health or the environment." (*Cox v. City of Dallas*, 256 F.3d 281, 293 (2001); see also 42 U.S.C. 6972).

A citizen may bring a RCRA claim "against any person, including the United States and any other governmental instrumentality or agency ... [that is a] past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility." [Emphasis added] (42 U.S.C. § 6972). This has been read extensively by the courts to effectuate the broad-sweeping legislative intent of holding contaminating parties accountable.

III. The City's RCRA Violations and Contribution to the Contamination at Issue

The Coppolas, at all relevant times, have owned, operated, supervised and controlled the Coppola property, and have been obligated to properly handle PCE and other chemicals used in the operation of their business. From at least 1965 to present, the Coppolas have used and unlawfully dumped several types of solid and hazardous waste, including but not limited to PCE from their property into the ground and into City's sewers.

As a result of the Coppolas having knowingly – indeed purposefully – dumped PCEs and other chemicals from their business, a clean up is necessary.

The United States EPA defines a facility as "[a]ll contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units." 40 C.F.R. § 260.10. "[T]he term 'facility' has been broadly construed by the courts, such that 'in order to show that an area is a 'facility,' the plaintiff need only show that a hazardous substance under CERCLA is placed there or has otherwise come to be located there." *Stevens Creek Assocs. v. Barclays Bank* (1990) 915 F.2d 1355, 1360). The EPA has statutorily codified PCE as a hazardous substance. 40 CFR 261.31.

The Coppolas' ownership, control, and operation of the Coppola property and the operation and control of the dry cleaning business there at all relevant times qualifies them as an owner and operator of a treatment, storage, and disposal facility within the meaning of RCRA, in which hazardous substances are knowingly transported, stored, and disposed. Further, the EPA defines a generator as "any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation." (40 C.F.R. 260.10). The Coppolas' operation and use of PCE has caused PCE contamination to be introduced to previously uncontaminated areas of the surrounding environment, qualifying the Coppolas as generators of hazardous waste.

Thus, City meets RCRA's first prerequisite to assert a RCRA claim against the Coppolas, and each of them. and will make the showing that the Coppolas, and each of them, are transporters and generators of hazardous waste as well as an owner and operator of a hazardous waste treatment, storage, and disposal facility. The Coppolas have, and continue to contribute to the contamination at issue through their failure to adequately operate, maintain, inspect, clean, repair, and/or replace their business and their facility and by dumping their chemicals into the environment. This has resulted in breaks, cracks, leaks, and defective joints, among other defects. The Coppolas' knowing misuse and purposeful dumping of chemicals like PCE and other constituents in, on, and around the Coppola Property has caused the release and exfiltration of PCE, along with other constituents, since at least the late 1960s, and at all times relevant to this litigation.

The PCE released and disposed from the Coppolas' business has and continues to migrate downgradient into previously uncontaminated areas including the surrounding soil, soil gas, and groundwater at and near the Coppola Property, exacerbating the contamination plume at issue.

Although the DTSC had also previously issued a broad IS&E Order pertaining to groundwater in Visalia, City just became aware that it had the requisite supporting data to meet federal pleading standard requirements with respect to an imminent and substantial endangerment attributable to the Coppolas, which is RCRA's third element.

IV. Conclusion

This notice sufficiently complies with both the RCRA and EPA notice requirements, and will be sent to all appropriate and necessary agencies. This notice specifies City's bases to properly assert a RCRA claim against the Coppolas, and each of them, and both the ongoing environmental investigation as well as discovery to be conducted will further support and confirm City's position.

City will seek injunctive relief as available under RCRA to hold the Coppolas liable for their contribution, jointly and severally, to the contamination at issue by Court Order to undertake investigation and/or cleanup efforts on its own accord. City will also seek attorney fees under RCRA.

During RCRA's statutory 90-day notice period, City is willing to engage in good faith discussions with the Coppolas pertaining to potentially effective investigation and remedial strategies. To the extent these prove ineffective, City will seek leave from the Court to assert a RCRA claim against the Coppolas upon expiration of the 90-day notice period.

In addition to the violations set forth above, this Notice is intended to cover all violations of RCRA evidence by information which becomes available to City after the date of this Notice, and seeks all penalties and other enforcement provisions related to such violation.

Very truly yours,

HERR PEDERSEN & BERGLUND LLP



Leonard C. Herr

LCH/cc

cc: Gina McCarthy, Administrator of the EPA (via Registered Mail)
Jared Blumenfeld, Regional Administrator of EPA, Region 9 (via Registered Mail)
Caroll Mortensen, Director/Administrator of the CA Solid Waste
Management Agency (via Registered Mail)

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